SBCivil Writ Petition No.941/2005

Banwari Lal
Vs.
Union of India & Ors.

Date of Order :: 6th September, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Vijay Mehta, for the petitioner.
Mr. P.K.Lohra ]
Mr. V.K.Mathur] for the respondents.

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The appropriate government refused to refer an industrial dispute raised by the petitioner workman prescribing the reasons as under:-

> "The disputant, Shri Banwari Lal Chawria could not establish his claim, prima facie, that he has rendered 'continuous service' as defined under Section 25-B of the ID Act, 1947 so as to become entitled to any relief under the Act. It is also observed that the present claim has been put forth seven years after his alleged illegal termination from service without giving any reasons for the delay. In the circumstances, no valid dispute survives for consideration now."

The petitioner workman by representation dated 31.10.2003 made a request to the competent officer of the appropriate government to review the decision for not making reference and while doing so he also met with the reasons given for not making the reference. While meeting with the reasons for causing delay in industrial dispute the petitioner in his representation dated 31.10.2003 stated as under:-

> "That as regards the delay in filing the dispute, this point was not raised during the conciliation proceedings either by the employer or by the conciliation officer himself otherwise the applicant would have explained the delay had been caused as the applicant was admitted in the Hospital from 12.8.96 to 28.8.96 & was under going treatment there after, for about 4 years and was mentally & physically not in a position to work.
>
> The discharge card in support of the above is enclosed herewith for your kind perusal. Moreover, there is no provision of limitation in the I.D. Act and Hon'ble Supreme Court has also held in 2000(2) LLN 405 that delay of 8 years does not wipe out the dispute. Non reference of the instant dispute would go squarely against the said verdict of the Hon'ble Supreme Court."

No action was taken by the appropriate government to review its earlier decision, therefore, this petition for writ is filed praying for an appropriate writ, order or direction for appropriate government to refer the industrial dispute for its adjudication to the competent labour court.

A reply to the writ petition has been filed on behalf of the employer justifying the reasons given by the appropriate government for refusal to make reference of the dispute for its adjudication.

Heard counsel for the parties.

The appropriate government refused to make reference of the dispute for its adjudication on the count that :-

> (1)the workman prima facie failed to establish that he was in continuous service of the employer as defined under Section 25-B of the Industrial Disputes Act, 1947; and
>
> (2)no reason is given by the workman for raising industrial dispute after a lapse of a period of seven years.

The question as to whether workman was in continuous service of the employer is required to be decided by the labour court/industrial tribunal as the case may be by adjudicating the dispute on merits as parties are required to lead evidence to establish the facts stated in their claim. It is not open for the appropriate government to adjudicate merits of a dispute while considering the issue for making a reference of the dispute.

It is true that no industrial dispute can be referred for its adjudication if it is raised after an inordinate delay without justifying the same. In the present matter from perusal of record it appears that the issue of delay in raising dispute was never raised or the dispute was not at all objected by the employer being raised at belated stage before the conciliation officer. The conciliation officer also nowhere made

any remark about delay in raising the industrial dispute. As such there was no occasion for the workman to explain and justify delay in raising the dispute. The workman after denial for making reference by the appropriate government submitted a representation with an explanation that caused delay in raising the dispute. Whether such a delay is bonafide/justified or not is required to be decided by the adjudicating body and not by appropriate government.

In view of it I am of the considered opinion that the appropriate government erred while refusing to refer industrial dispute for its adjudication to the adjudicating body.

The writ petition, for the reasons mentioned above, is allowed. The appropriate government is directed to reconsider the issue with regard to the reference of the industrial dispute for its adjudication and pass an appropriate order within a period of three months from today.

No order to costs.

( GOVIND MATHUR ),J.

kkm/ps.